IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11084 of 1994

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BIPINGIRI D GOSAI - Petitioner(s)

Versus

DIVISIONAL CONTROLLER - Respondent(s)

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Appearance :

MR MUKESH H RATHOD for Petitioner No(s).: 1.

MR YOGESH S LAKHANI for Respondent No(s).: 1.

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CORAM :HON'BLE MR JUSTICE KS JHAVERI

Date : 24/06/2005

ORAL JUDGMENT

1.0 The petitioner herein has challenged the order dated 20.08.1993 passed by the Labour Court, Surat, in Reference

No.291 of 1989, whereby the said Reference was rejected.

2.0 The petitioner was working as a Conductor with the respondent Corporation. On 17.11.1987, while the petitioner was on duty, the bus was checked by the checking squad of the respondent Corporation and some irregularities were found in the issuance of tickets. Departmental inquiry was held against the petitioner. The competent authority of the respondent Corporation came to the conclusion that the charges levelled against the petitioner were proved, and, ultimately, the petitioner was dismissed from service on 15.03.1988.

2.1 Feeling aggrieved by the said order, the petitioner preferred reference being Reference No.291 of 1989 before the Labour Court, Surat. The Labour Court, Surat, by order dated 20.08.1993, rejected the said Reference of the petitioner. Hence, this petition.

3.0 Mr. M H Rathod learned advocate for the petitioner has contended that the Labour Court has erred in coming to the conclusion that if the workman has not challenged the legality and validity of the inquiry then the Labour Court has no power to examine the validity of the finding separately and it has only the power to go into the question of Section 11(A) of the I.D. Act. He has further contended that the findings of the Labour Court on the aspect of Spot Statements is also erroneous. He has, therefore, submitted that the impugned order is illegal and erroneous and deserves to be quashed and set aside.

4.0 I have heard learned counsel for the parties and perused the documents placed on record. Having gone through the impugned order of the Labour Court and the documents placed on record, it appears that the punishment of dismissal from the service is a little harsh. Moreover, considering the fact that the petitioner has put in more than 14 years of service prior to his dismissal, it would be appropriate to modify the impugned order of dismissal.

5.0 In above view of the matter, the respondent Corporation is directed to treat the petitioner as if he had voluntarily retired from the service on 15.03.1988, i. e. the date on which he was dismissed from the service. The petitioner is directed to tender his resignation before the respondent Corporation as if he had resigned from the service on 15.03.1988, i. e. the date on which he was dismissed from the service, within a period of one month from today. The respondent Corporation shall pay all the retirement dues to the petitioner, as if the petitioner had resigned from the service on 15.03.1988, within a period of three months from the date of his tendering the resignation. The impugned order of the Labour Court is accordingly modified to the aforesaid extent. Rule is made absolute to the aforesaid extent with no order as to costs.

(K. S. JHAVERI, J.)

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